



Contract #

~~059088~~

059088

STATE OF UTAH CONTRACT

1. **CONTRACTING PARTIES:** This contract is between the following agency of the State of Utah:
Department of Transportation Agency Code: 810 Traffic Management, Division referred to as (STATE), and the following CONTRACTOR:

Convergys Customer Management Group
Name

201 East Fourth Street
Address

Cincinnati OH 45201
City State Zip

Contact Person Liz Wruck Phone (703)-885-5742 Email liz.wruck@convergys.com
Federal Tax ID# 311598292 Vendor # 110765A Commodity Code # 90620000000 & 72515000000

LEGAL STATUS CONTRACTOR
☐ Sole Proprietor
☐ Non-Profit Corporation
☒ For-Profit Corporation
☐ Partnership
☐ Government Agency

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is to provide:

Network voice-hosting services and support of Utah's phone services 511 traveler information telephone service. Assist in the migration design, build, implement, operate, and maintain a telephone services.

3. **PROCUREMENT:** This contract is entered into as a result of the procurement process on RX# 4600000163, FY04 Bid# DG4029.

4. **CONTRACT PERIOD:** Effective date 02 August 2004 Termination date 31 July 2007 unless terminated early or extended in accordance with the terms and conditions of this contract. 2 (1) year renewal options.

5. **CONTRACT COSTS:** CONTRACTOR will be paid a maximum of \$1,021,290 for costs authorized by this contract.

6. **ATTACHMENT A:** Division of Purchasing's Standard Terms and Conditions

ATTACHMENT B: Scope of Work and Pricing (Exhibit -1 Project Plan)

ATTACHMENT C: Special Terms and Conditions

Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**

- a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid #DG4029 dated 06/22/04.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

Theodore J. Conior 9/28/04
Contractor's signature Date

THEODORE J. CONIOR
Type or Print Name and Title
GENERAL MANAGER

STATE

Dave Miles 10/12/04
Dave Miles, Operations Engineer Date

D. P. H. H. H. NOV 12 2004
Director, Division of Purchasing Date

11-17-04
Director, Division of Finance Date

Denice McCarthy
Agency Contact Person

(801) 965- 4761

Telephone Number

(801) 965-4073

Fax Number

dmccarthy@utah.gov

Email Address

(Revision 08/26/2003)

JUN 17 2005

ENT'D MAR 30 2005

ATTACHMENT B
SCOPE OF WORK AND PRICING

Contractor will prepare an annual program review summary of system performance and operations that will include: annual summary and monthly summaries of call volumes and call transfers, system enhancements and modifications completed (e.g., content, new partners), system enhancements underway, performance against goals, and overall system operations.

- 3.3 Invoices – Invoices shall be prepared and submitted in accordance with UDOT guidelines.
- 3.4 Project Meetings – Contractor will organize and conduct project meetings with UDOT and be responsible for preparing and disseminating agendas and meeting summaries to UDOT. The purpose of these meetings will be to discuss the progress of work in terms of schedule and budget, to discuss technical and institutional issues that may arise, and to discuss comments on previously submitted products. During the design, build, testing and migration phases, bi-monthly meetings or teleconferences are anticipated. More frequent meetings may be needed as the migration date approaches. Once the new 511 service is operational, monthly progress meetings or teleconferences are anticipated to be held between UDOT and the Contractor's project manager.
- 3.5 Project Records and Files – Contractor will maintain project records and files. Project records shall include progress reports, meeting agendas and summaries, management plans, schedule updates, project correspondence, product submittals, and source code specific to Utah's 511 service. All project records shall be considered the property of UDOT and shall be made available by the Contractor to UDOT personnel, upon request, for review and audit.
- 3.6 Configuration Management and Control – Contractor will develop a configuration management plan and implement software and hardware configuration control and management procedures. This plan should outline processes, procedures and responsibilities for documenting and implementing any changes, modifications and enhancements, including appropriate development requirements, approvals/acceptance and sign-off authorities. Configuration management will be under the control of a Configuration Control Board that will consist of UDOT staff and representatives of the Contractor.
- 3.7 Quality Assurance and Control Plan – Contractor will develop a quality assurance and control plan to ensure compliance with all appropriate standards of quality throughout the term of the contract. The quality assurance and control plan shall be reviewed and updated as needed. The plan should include a performance level agreement and outline how the performance level is established and quantified.

4. **ANTICIPATED MAJOR TASKS:** The following are the major tasks anticipated to be completed by the Contractor:

- 4.1 Detailed Functional and System Requirements – Contractor will prepare detailed functional and system requirements for Utah's new 511 service that maintain the functional equivalence of the current 511 service and govern the migration and future enhancement of the service. The detailed functional and system requirements shall be based on the requirements outlined in Section C3 of the RFP.
- 4.2 System Architecture – Based on the detailed functional and system requirements, the Contractor will prepare an architecture that shows the various Contractor-provided components of the new 511 service. The architecture should graphically depict all subsystems, data interfaces, and call transfers, as well as identify the location and ownership of major hardware and software components.
- 4.3 Detailed Call Flows and Dialogs – Contractor will prepare detailed call flow diagrams for the new 511 service that mirror the call flow of the existing 511 service (see Attachment G for TellMe's original design of the call flow diagrams). Contractor will also prepare call flow diagrams for all enhancements to the service that result in expansion or modifications to the current menu structure. These call flow diagrams should illustrate menus, prompts, and sample dialogs for each menu option and layer. Call flows should include menu options, system information, and show sample dialogs with user requests. Dialogs also should address 'help' functions. Dialogs and menu options should indicate which responses are recorded and which are dynamically generated. All call flow diagrams should illustrate both voice recognition and touch-tone responses as callers will have the option to use either.

ATTACHMENT B

SCOPE OF WORK AND PRICING

- 4.4 System Interface Design – Contractor will prepare a document that provides detailed design for the interfaces that will be required between the public switched telephone network (PSTN), the speech engine, the IVR data server, UDOT's 511 XML server, UTA (for a call transfer), and all other system components. A summary describing the designed interfaces will be submitted to UDOT.
- 4.5 Interactive Voice Response Platform Demonstration – Contractor will provide a customized IVR platform that has the capability of using voice recognition and concatenated speech output to match 511 callers with requested traveler information. The new IVR platform will provide an equivalent or better level of service to end users as compared to that which is provided by the IVR platform of the existing 511 service. Contractor will demonstrate the IVR platform capabilities, including speech recognition, voice messages, call transfers, and other system features, to UDOT prior to commencing with final implementation.
- 4.6 System Security and Disaster Recovery Plan – Contractor will prepare a system security plan that addresses system security and includes plans and provisions to restrict access and protect confidential information through means such as external and internal firewalls. These security plans and provisions should be reviewed and updated as needed throughout the term of the contract. In addition, the Contractor shall prepare a disaster recovery plan that demonstrates how the system will be brought back to its previous working condition after a system failure or a security breach.
- 4.7 System Acceptance Test Plan – Contractor will prepare a system acceptance test (SAT) plan outlining procedures and performance requirements for the testing phase. It is envisioned that acceptance testing will occur at key points in the design and build of the system. The Contractor is required to perform a full end-to-end test prior to the migration from the existing 511 service to the new 511 service. Additional testing will be performed once the migration has been completed. The system acceptance test will need to demonstrate functionality of all interfaces and transfers, voice and touch-tone recognition, and menus, and that the system is accurately providing information based on requests. A load test also will be performed by the Contractor prior to migration.
- 4.8 Migration Plan – Contractor will prepare a migration plan that details how the Contractor will transition from the existing 511 service to the new 511 service that has a functionally equivalent, or superior, level of service. The migration plan shall discuss the system and interface development and testing to be performed before, during, and after migration to ensure that there is no discernible impact to callers in being able to access traveler information. The migration plan shall also discuss how the transfer of the toll-free services from TellMe to the Contractor is to be accomplished.
- 4.9 Operations and Maintenance Plan – Contractor will develop an operations and maintenance plan that addresses, at a minimum, the following key components:
- Overall system operations;
 - Staffing plan and requirements;
 - Monthly reporting/usage; and
 - Maintenance needs.
- 4.10 Performance Monitoring Plan – Contractor will develop and implement a performance monitoring plan in accordance with the functional and system requirements outlined in Section C3 and any other performance requirements developed as part of the Contractor's scope to measure the success of meeting the system requirements.
- 4.11 Initial Enhancements Plan – Contractor will develop a plan detailing the initial enhancements anticipated to be implemented within the first six months after the successful migration of the 511 service.
- 4.12 Business Model Analysis – Contractor will pattern the new 511 service after the business model currently in place for Utah's 511 service. Also prepare a business model analysis that discusses potential opportunities to minimize UDOT funding obligations, upon successful migration of the 511 service, while maximizing the potential for profit for the private sector. Institutional issues surrounding possible public-private partnerships will be discussed. The implementation of potential future enhancements should be considered in the business model analysis.

ATTACHMENT B

SCOPE OF WORK AND PRICING

4.13 Exit Strategy – An exit strategy shall be included in the event that the Contractor no longer provides hosting services in the future. The exit strategy shall discuss how all pertinent code and files will be transferred to the new voice-hosting service provider.

5. **FUNCTIONAL AND SYSTEM REQUIREMENTS:** System features and functional requirements in the following categories in developing a 511 service that provides an equivalent or better level of service than is currently available with the existing 511 service:

5.1 Basic System Functions and Features

5.1.1 The new 511 service shall adhere to the National 511 Deployment Coalition's 511 Implementation and Operational Guidelines for 511 Services, Version 2.0 (hereinafter referred to as National 511 Guidelines), when feasible, in achieving equivalent functionality with the existing 511 service and in making future enhancements to the service.

5.1.2 Contractor complies with UDOT data format standards and design the 511 service accordingly.

5.1.3 The system architecture shall be a privately hosted, network-based solution.

5.1.4 Callers to the 511 service shall not incur a per-call cost of more than the cost of a local call.

5.1.5 The 511 service shall comply with applicable Americans with Disabilities Act (ADA) requirements for information accessibility.

5.1.6 Contractor is responsible for all tasks related to establishing an IVR platform for the 511 service, which include, but are not limited to:

- Telephone network configuration;
- Voice recordings;
- Menu tree development;
- System logic;
- Data server configuration;
- Training; and
- Management.

5.1.7 Any needed maintenance, upgrade, and life-cycle costs for the Contractor-provided portions of the 511 service will be incurred by the Contractor.

5.1.8 The 511 service shall utilize the most current information available. Contractor's IVR platform shall poll UDOT's 511 XML server as frequently as is needed to obtain updated information.

6. **MENU CONTENT**

6.1 The 511 service accessible to the public shall include information in the following categories:

- Traffic (Interstate, U.S., and other UDOT-maintained highways);
- Road conditions (November through April);
- Public transit; and
- Ferries.

ATTACHMENT B

SCOPE OF WORK AND PRICING

- 8.4 The voice recognition software shall utilize Nuance version 8.0 speech engine, or equivalent, and be capable of “educating” itself based on the accents and words most commonly used by callers of the 511 service, thereby improving the voice recognition functionality.
- 8.5 The IVR platform shall recognize touch-tone (DTMF) commands from callers, thereby creating an alternate method besides voice commands for callers to request information.
- 8.6 Traveler information shall generally be converted to voice messages by combining concatenated voice clips using VXML technology. Pre-recorded or text-to-speech messages may be appropriate in certain cases, such as floodgate messages or static information provided by UTA.
- 8.7 Contractor will be responsible for incorporating the UDOT-owned concatenated voice clips specific to Utah’s 511 service into the database of voice clips used for system output.
- 8.8 UDOT shall maintain the rights to all voice recordings developed specifically for Utah’s 511 service.

9. SYSTEM REQUIREMENTS

- 9.1 The 511 service shall be available to travelers 24 hours a day, 365 days a year.
- 9.2 In accordance with the National 511 Guidelines, the 511 service shall be available to callers 99.8% of the time, which translates to the service being unavailable less than 18 hours per year. The Contractor shall not be responsible for meeting this availability requirement during times when the Internet connection between the IVR platform and UDOT’s 511 XML server is unavailable.
- 9.3 No individual element of the components of the 511 service provided by Contractor will have a mean time between failures of less than 13,000 continuous hours.
- 9.4 In accordance with the National 511 Guidelines, the Contractor will provide sufficient capacity for the 511 service so as to be able to accept all calls for the 90th percentile peak hour load.
- 9.5 Contractor will estimate future call volumes and call minutes based on historical usage statistics from Utah’s 511 service and other comparable 511 services nationwide. Historical usage statistics from Utah’s 511 service are available in Attachment F.
- 9.6 Contractor will determine the number of ports required to accommodate anticipated average call volumes.
- 9.7 Contractor will allocate the appropriate level of system capacity so that “bursting”, or the use of additional ports, is not needed to accommodate anticipated average call volumes but is available, if needed, to accommodate anticipated peak call volumes.
- 9.8 Contractor will implement UDOT requests for minor changes in menu structure or composition within 2 hours of the request or grant UDOT the appropriate access to make the requested minor changes in menu structure or composition. Minor changes are anticipated to include such activities as enabling/disabling a floodgate message and replacing a voice command prompt with a new prompt.

10. MIGRATION

- 10.1 Contractor is responsible for providing a 511 service with a functionally equivalent, or superior, level of service to what is currently being provided through the existing 511 service.
- 10.2 Contractor will develop and test the new 511 service off-line prior to disengaging the existing 511 service.
- 10.3 Contractor will procure the transfer of the toll-free services from TellMe to the Contractor (unless otherwise directed by UDOT) for those toll-free numbers currently associated with Utah’s 511 service. The Contractor will be responsible for all charges associated with the transfer and use of the toll-free service.

ATTACHMENT B

SCOPE OF WORK AND PRICING

13. PROJECT DELIVERABLES AND PAYMENT SCHEDULE:
(SEE EXHIBIT 1- PROJECT PLAN)

	Project Tasks and Payment Deliverables	Price & deliverables
1.	Develop voice and touch-tone command recognition and Voice XML concatenated speech output components of the IVR Platform including develop IVR data server component of the IVR platform	\$20,160
2.	Develop interface s required between the PSTN, the speech engine, the IVR data server, UDOT's 511 XML server, UTA(for call transfer), and all other system components	\$14,400
3.	Migrate from the existing 511 service to the new service	\$204,480
4.	Perform QA/QC	\$40,440
5.	Perform acceptance testing	\$14,400
6.	Any other major tasks in the design and build of the initial system. Set up of the business Information Portal (BIP) reporting server (one time charge) a. BIP reporting Development (standard Reports plus one custom report b. Project Management for deployment period from (8/01 to 12/31/04). c. Requirements Analysis and Documentation d. Usability Testing- test calls before production	\$2,000 \$5,200 \$28,600 \$7,800 \$12,350
7.	First phase-Total cost of Development	\$349,830
8.	20% holdback for performance	\$69,966
9.	4 monthly payments until after deploy	\$69,966

14. MONTHLY SERVICE COSTS:

Cost of Services	Cost	Extended cost
Annual Application Maintenance	\$72,000 x5 per yr	\$360.000
Annual Program Management, includes 30 hours of project labor per month	\$36,000 x5 per yr	\$180.000
Annual operation and maintenance of the services with recommended number of ports and minutes. <u>Tiered Pricing models –Calculated Monthly</u> 0-20,000 minutes billed at \$0.12/minute 20,001-40,000 minutes billed at \$0.10/mintue 40,001-100,000 minutes billed at \$0.09/minute 100,001-250,000 minutes billed at \$0.08/minute 250,000+minutes billed at \$0.075/minute Long distance Access, Telco, taxes and surcharges billed at \$0.04/minute Transfer-connect to POTS line billed at actual rate, estimated at \$.078/minute Transfer – connect to 800 number billed at actual rate, estimated at \$.03/minute Pay phone charges billed at actual rate, estimated at \$.32/call		

ATTACHMENT B

SCOPE OF WORK AND PRICING

15. FUTURE DEVELOPMENT COSTS:

	FUTURE DEVELOPMENT COSTS	
1.	Annual Operation and maintenance of the service design with 25% fewer ports allocated than recommended model above applies	
2.	One initial upgrade to include at least some of the additional enhancements listed in the RFP	\$54,000
3.	Annual enhancement costs (estimated, for new services)	\$54,000
	Typical costs and labor rates for any additional services that can be expected over the life of the 5year contract. Additional Program Management as required (per hour) Optional Voice Talent , per hour, minimum of 3 hours Transcription-taking calls from the system	\$150/per hr \$195/per hr Price By Quantity /Time Frame

ID	Task Name	Start	Finish	2024	2024	2024	2024	2025
				Aug	Sept	Oct	Nov	Dec
				1	2	3	4	5
1	Project Name	Start	Finish	2024	2024	2024	2024	2025
2	Project Name	Start	Finish	2024	2024	2024	2024	2025
3	Requirements & Analysis Specification	Mon 8/20/24	Fri 8/30/24					
4	Requirements & Analysis Specification	Mon 8/20/24	Tue 8/27/24					
5	Reporting Requirements	Mon 8/20/24	Fri 8/30/24					
6	Detailed CRM Flow Design	Mon 8/20/24	Fri 8/30/24					
7	Client Review and Feedback	Mon 8/20/24	Tue 8/27/24					
8	Sign-off and Requirement Freeze	Tue 8/27/24	Tue 8/27/24					
9	Voice User Interface	Wed 8/28/24	Mon 9/2/24					
10	VUI and Functional Specification	Wed 8/28/24	Fri 9/6/24					
11	Client Review and Feedback	Mon 9/2/24	Mon 9/2/24					
12	Sign-off & VUI Freeze	Mon 9/2/24	Mon 9/2/24					
13	Voice Recordings	Mon 9/2/24	Tue 9/3/24					
14	Select Voice Talent (Person)	Mon 9/2/24	Mon 9/2/24					
15	Finalize & Approve Prompts	Tue 9/3/24	Wed 9/24/24					
16	Order Voice Prompt Recordings	Wed 9/24/24	Wed 9/24/24					
17	QA Voice Prompts	Thu 9/26/24	Thu 9/26/24					
18	Detailed Design Specification	Wed 9/18/24	Tue 9/24/24					
19	Detailed Design Specification	Wed 9/18/24	Fri 9/27/24					
20	Design Review Sessions	Mon 9/23/24	Tue 9/24/24					
21	Detailed Design Final Draft	Tue 9/24/24	Tue 9/24/24					
22	Telecom	Mon 9/23/24	Mon 9/23/24					
23	Review Telecom Requirements	Mon 9/23/24	Mon 9/23/24					
24	Order Lab Telecom	Mon 9/23/24	Mon 9/23/24					
25	Setup Lab Telecom	Mon 9/23/24	Mon 9/23/24					
26	Order Production Telecom	Mon 9/23/24	Mon 9/23/24					
27	Setup Production Telecom	Mon 9/23/24	Mon 9/23/24					
28	Deployment	Mon 9/23/24	Fri 9/27/24					
29	Application Development	Tue 9/24/24	Fri 9/27/24					
30	AdaptiveVUI Development (Iteration 1)	Tue 9/24/24	Fri 9/27/24					
31	AdaptiveVUI Development (Iteration 2)	Mon 10/1/24	Fri 11/5/24					
32	Bug Fixes & Changes	Mon 11/18/24	Fri 12/20/24					
33	Data Access development	Tue 9/24/24	Fri 10/10/24					
34	Java / Business Logic	Tue 9/24/24	Tue 9/24/24					
35	API Scope Setup	Tue 9/24/24	Tue 9/24/24					
36	DBA	Mon 9/23/24	Fri 10/18/24					
37	Remote Local Data Housing Requirements	Tue 9/24/24	Wed 9/25/24					
38	Design/Develop DB Specifications	Tue 9/23/24	Mon 9/27/24					
39	Implementation of New Schema in Dev	Tue 9/23/24	Wed 9/26/24					
40	Cartridge setup in Production	Mon 9/23/24	Mon 9/23/24					
41	Set up Custom Tables	Thu 9/26/24	Tue 10/8/24					
42	Load Data in Production	Wed 10/9/24	Fri 10/18/24					
43	BI Reports	Tue 9/24/24	Tue 11/26/24					
44	Review Report Requirements	Tue 9/24/24	Wed 9/25/24					
45	Provide Reporting Dev. Estimates	Thu 9/25/24	Thu 9/25/24					
46	Code BI Standard Reports	Mon 10/25/24	Fri 10/25/24					
47	Code Custom Reports (Data Freshness)	Mon 10/25/24	Fri 10/25/24					
48	Test Reports	Mon 11/18/24	Mon 11/18/24					
49	Create BI Deployment Package	Tue 11/26/24	Tue 11/26/24					
50	Submit BI Deployment Package to EAO	Tue 11/26/24	Tue 11/26/24					
51	Testing	Tue 9/24/24	Thu 11/14/24					
52	Development Integration Testing	Mon 10/14/24	Thu 11/14/24					
53	Unit Testing, Bug Fixes & QA	Mon 10/14/24	Fri 10/25/24					
54	Unit Testing, Bug Fixes & QA	Mon 10/14/24	Wed 11/13/24					
55	Create Deployment Package for ATG TEST	Thu 11/14/24	Thu 11/14/24					
56	Submit Deployment Package for ATG TEST	Thu 11/14/24	Thu 11/14/24					
57	ATG & System Testing	Tue 9/24/24	Fri 11/15/24					

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ATTACHMENT C
SPECIAL TERMS AND CONDITIONS

1. **INVOICING** **CONTRACTOR** shall submit invoices to STATE Project Manager:

Bryan Chamberlain, Project Manager
Traffic Management Division
Utah Department of Transportation
2060 South 2760 West
Salt Lake City, Utah 84104-4592

The contract number shall appear on all invoices and correspondence.

Billings must be itemized, showing hours worked by each staff member with a clear definition of the project phase or task the work relates to. All billings must correlate to the project progress reports and be submitted in a timely manner.

Upon approval of the invoice by the STATE Project Manager, payments will be processed. STATE will remit payment by mail.

2. **PAYMENTS** Progress payments will be made, with 20% of the invoiced amount retained as a performance guarantee. **CONTRACTOR** shall render periodic invoices for the services rendered to STATE. STATE shall process the entire amount of such invoices (excluding only "Disputed Amounts", as defined below) within thirty (30) days from the date of receipt of each invoice. Any amounts remaining unpaid for more than forty-five (45) days after that shall be subject to interest thereon equal to one and one-half percent (1.5%) per month. In addition, if any non-Disputed Amount owed by STATE to **CONTRACTOR** is not paid within forty-five (45) days of the date of the invoice or if any Disputed Amount agreed or determined to be owed to **CONTRACTOR** is not paid within ten (10) days from the date of such agreement or determination, **CONTRACTOR** may, at its option, upon five (5) business days written notice, immediately suspend **CONTRACTOR**'s obligations to STATE until payment is received, and/or terminate this Contract for breach. Payment shall be considered credited to the account of STATE when received by **CONTRACTOR**. As used herein, "Disputed Amounts" shall mean invoice amounts (other than any amount for any applicable minimum charge) that are subject to a bona fide dispute raised by STATE in a writing received by **CONTRACTOR** within twenty (20) days of the date of receipt of an invoice therefore and with respect to which STATE is making reasonable, diligent and good faith efforts to resolve.
3. **FINAL PAYMENT** Final payment, including any amounts retained, shall be made 60 days after final sign off for each task and deliverable, such as file translation, custom computer programming or project records, and system test materials and documentation have been received and accepted by the STATE Project Manager as accurate and complete.
4. **PRICE GUARANTEES** The **CONTRACTOR** agrees the prices bid on services in this contract shall be guaranteed through completion of the project.
5. **NOTIFICATION** Notice given under this Contract shall be written, or sent by facsimile or other electronic means. Written notice shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Facsimile or other electronic notice must be followed within three (3) days by written notice. All notices shall be effective when first received at the following addresses:

If to **CONTRACTOR**:

Convergys Corporation
Legal Department, 14th Floor
201 East Fourth Street
Cincinnati, OH 45202

with copies to:
Liz Wruck, Sr. Account Executive

If to STATE:

Utah Department of Transportation
Denice McCarthy, Purchasing Agent
Box 148260
4501 S 2700 W
Salt Lake City, UT

with copies to:
Kelvin Thacker, Procurment Service Manager
Dave Kinnecom, Director

ATTACHMENT C

SPECIAL TERMS AND CONDITIONS

6. **CHANGE IN PERSONNEL OR RESOURCES** No change in personnel or resources assigned to this project will be permitted without prior written approval of STATE's Project Manager.
7. **RESPONSIBILITY FOR WAGES** The CONTRACTOR is responsible for all applicable company wages in accordance with the federal, state and local laws and ordinances.
8. **EMPLOYMENT OF STATE EMPLOYEES** The CONTRACTOR agrees not to engage in any way the services on this contract, of any present or former STATE employee who was involved as a decision maker in the selection or approval process or who negotiated and/or approved billings or contract modification for this contract.
9. **NON-SOLICITATION** Neither party shall knowingly solicit for employment or knowingly employ any employee of the other party who performed services on behalf of either party in connection with, or was otherwise involved in, this Contract or applicable Work Order, during the lesser of: (i) the term of this Contract and for a period of two (2) years after its termination; or (ii) two (2) years after the employee is no longer employed.
10. **CONFIDENTIAL INFORMATION** To the extent work under this contract requires that the parties may be given access to confidential or proprietary business, technical, or financial information the parties shall, after receipt thereof, treat such information as confidential. Both parties shall maintain, as confidential, and shall not disclose to any person outside its employ, nor use for purposes other than performance of this Contract, any specifications, drawings, blueprints, data, business information, or other confidential information which is learned by virtue of this Contract, except where required by law. The parties agree not to appropriate such information to their own use or disclose such information to other parties unless specifically authorized in writing. The foregoing obligations, however, shall not apply to:
 - a. Information which, at the time of receipt by the CONTRACTOR, is in public domain.
 - b. Information which is published after receipt by the CONTRACTOR, or otherwise becomes part of the public domain through no fault of the CONTRACTOR.
 - c. Information which the CONTRACTOR can demonstrate was already in its possession at the time of receipt, and was not acquired directly or indirectly from the STATE.
 - d. Information which the CONTRACTOR can demonstrate was received from a third party who did not require the CONTRACTOR to hold such information in confidence.
11. **QUALITY OF SERVICES** CONTRACTOR represents to STATE that it is experienced in and thoroughly familiar with all aspects of the services required hereunder and is properly qualified as applicable and is equipped, organized, and financially able to perform the services.

No changes in the services to be provided by CONTRACTOR under this Contract shall be made without STATE's prior written approval.
12. **DEVELOPMENT STANDARDS** CONTRACTOR agrees that all software development tools used for design, development, source code control and programs, will follow STATE standard. All software development tools must receive prior approval by the Project Manager before being used in the development/design phase of the project.
13. **PROGRESS REPORTS** The CONTRACTOR will submit monthly progress reports following the format established by the STATE in sufficient detail to document the progress of the work and support the monthly claim for payment. The report is to be submitted at the same time as an invoice. Payments will not be made without a supporting progress report.
14. **CONFERENCES** The CONTRACTOR will prepare and present written information and studies to the STATE so it may evaluate the features and progress of the work. Either party may request a conference at a place designated by the STATE. The conferences shall also include inspection of the CONTRACTOR'S services and work products when requested by the STATE.

In regard to consultative work performed hereunder, the CONTRACTOR may be required to perform such additional work, during the warranty period, as is necessary to ensure any deliverable product hereunder meets the functional specifications as proposed by CONTRACTOR and approved by the STATE, or as otherwise agreed in writing as a part of this contract, without undue delays and without additional cost to the STATE.

ATTACHMENT C

SPECIAL TERMS AND CONDITIONS

15. **PROJECT REVIEWS** It is understood and agreed authorized representatives of STATE and, when federal Funds are used, the Federal Highway Administration, shall have the right to review and inspect the work in process, and the CONTRACTOR facilities, at any time during normal business hours or by appointment.
16. **RIGHT OF FUTURE DEVELOPMENT** The STATE reserves all rights to future development of this system, and is in no way required to obtain the services of the CONTRACTOR for these developments or release these developments to the CONTRACTOR.
17. **SIMILAR PRODUCTS** Should the STATE independently design, develop, or acquire ideas and concepts identical or similar to those provided by or contained in the CONTRACTOR's product, CONTRACTOR agrees this Contract shall not prevent STATE from using such ideas or concepts to design, develop, or acquire hardware or software for its use, provided STATE does not copy the CONTRACTOR's product.
18. **OWNERSHIP OF WORK PRODUCT** CONTRACTOR agrees that information gathered from callers regarding STATE's goods or services and portions of scripts created that are STATE specific and that are not general or generic in nature (collectively, "STATE Data") are and shall remain the sole and exclusive property of STATE, free and clear of any and all claims of CONTRACTOR. STATE agrees that anything (excepting only STATE Data) created or developed in whole or in part by CONTRACTOR (whether or not created or developed while, or in the process of, providing any services to or for STATE), including without limitation any and all programming, Internet related software or processes, interactive voice response related software or processes, software modifications and customizations, application program interfaces, telephone marketing related software, telephone marketing or business methods, statistical research and analysis, call disposition data, training methods or training materials or other telephone marketing related information, methods or processes (collectively, "CONTRACTOR Works"), are and shall remain the sole and exclusive property of CONTRACTOR, free and clear of any and all claims of STATE.
- All STATE Data shall be delivered to STATE and all CONTRACTOR Works shall be delivered to CONTRACTOR as requested or upon termination or completion of this Contract, whichever is earlier. Nothing in this Section shall preclude the parties from later agreeing in a writing signed by authorized officers of the parties to transfer to STATE some interest in a specific work product created or developed under this Contract.
19. **INTELLECTUAL PROPERTY INDEMNITY** Upon STATE's written notification to CONTRACTOR, CONTRACTOR shall defend, at its expense, any claim against STATE alleging the services, or any part thereof, infringe on any patent, copyright, trademark, trade secret, mask work, or other intellectual property interest in any country, and shall pay all costs and damages awarded. If an injunction against STATE's use, sale, lease, license, other distribution of the services or product, or any part thereof, results from such a claim (or, if STATE reasonably believes such an injunction is likely), CONTRACTOR shall, at its expense, (and in addition to the CONTRACTOR's other obligations hereunder) and as STATE requests, obtain for STATE the right to continue using, selling, leasing, licensing, or otherwise non-infringing but functionally equivalent. The provisions of this section shall not apply to any claim for infringement resulting solely from CONTRACTOR's compliance with STATE's detailed design specifications, where provided.
20. **FACILITIES AND MATERIALS** The CONTRACTOR and all personnel working under this contract shall not acquire, borrow, copy, or use in any manner software, documentation, or data on any STATE data processing facility for use other than as required to complete this contract.
21. **SUSPENSION OF WORK** Should the STATE desire to suspend the work, but not terminate the contract; this will be done by written confirmation. The work may be reinstated upon thirty (30) days advance written notice from the STATE. The STATE understands any such suspension of the work may affect both the time of performance and price to complete the work when reinstated.
22. **ASSIGNMENT OF CONTRACT** The CONTRACTOR shall not sublet, assign or transfer any part of this contract without prior written approval from STATE. Neither shall the provision of monies due under this contract be assignable without prior written approval of STATE.

ATTACHMENT C

SPECIAL TERMS AND CONDITIONS

23. **LIMITATION OF LIABILITY** Notwithstanding anything in this Contract or otherwise to the contrary (except only as set forth in the next sentence): (i) neither STATE nor CONTRACTOR shall be liable to the other party or to any third party for any lost profits; any loss of business; any cost of replacement services; or any indirect, consequential, incidental or special losses or damages of any kind or nature whatsoever, howsoever caused; and (ii) the sole and exclusive remedy of CONTRACTOR and of STATE for any claim, loss or damages in any way related to, or arising out of, this Contract or any services provided or anticipated to be provided shall be limited to such

party's actual, direct damages (which are not excluded under clause (i) of this sentence); provided, however, that the aggregate amount of all such actual, direct damages that arise out of, or relate to, any and all events and occurrences shall not under any circumstance exceed the following amount ("Cap Amount"): an amount equal to the product of three (3) times the average amount of the monthly fees actually paid by STATE to CONTRACTOR

under this Contract (excluding any charges and costs passed through by CONTRACTOR). The limitations expressed in the immediately preceding sentence shall not apply to or limit STATE's liability for any claims for payment of the full invoiced amounts that might be due to CONTRACTOR or of any applicable minimum charges; the Cap Amount shall not apply to or limit either party's liability for actual, direct damages

for any claims of a breach of its confidentiality obligations under this Contract or for any claims arising out of, in connection with or resulting from such party's misuse or appropriation of the other party's proprietary systems (software or otherwise) or for any claims for indemnification under this Contract; and the limitations expressed in the immediately preceding sentence shall not preclude either party from seeking injunctive relief. Any cause of action or claim brought by either party against the other party for breach of this Contract, for tortious conduct or for any other cause or claim, must be commenced within two (2) years after such cause or claim has accrued or shall thereafter be completely and forever barred.

24. **FAILURE TO COMPLETE** At any time the CONTRACTOR determines the contract work cannot be completed within the specified time or budget, the CONTRACTOR must notify STATE in writing, immediately. The STATE may, at its sole discretion, extend the contract by written modification.
25. **NON-PERFORMANCE** If, at any time, CONTRACTOR fails to demonstrate the required expertise (as represented in the CONTRACTOR's proposal) or fails to meet acceptable standards of performance, the STATE reserves the right to require the CONTRACTOR to replace individual(s) with a competent individual(s). The STATE Project Manager must approve this replacement. If the CONTRACTOR fails to accomplish project objectives or meet schedule commitments established in meetings with the STATE Project Manager, this contract may be canceled immediately. If the STATE elects to terminate the contract for this reason, the STATE will supersede paragraph #12 in Attachment A - Standard Terms and Conditions, and will not provide 30 days prior notice to the CONTRACTOR.
26. **TERMINATION** The occurrence of any of the following constitutes a breach by CONTRACTOR unless corrected by CONTRACTOR within thirty-(30) days.

CONTRACTOR failure to perform services and/or deliver product on time.

Services performed and/or product delivered by CONTRACTOR does not conform with the terms set forth in this Contract.

CONTRACTOR fails to perform any material provision of this Contract.

CONTRACTOR assigns this Contract, or any obligation or rights hereunder. (The term "assign" to include, without limitation, a transfer of majority.)

CONTRACTOR sells or merges with a third-party (not a parent or subsidiary company) without the prior written consent of STATE.

CONTRACTOR becomes insolvent or makes an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of CONTRACTOR's assets.

ATTACHMENT C

SPECIAL TERMS AND CONDITIONS



CONTRACTOR shall cure any of the above breaches and notify STATE of such cure within two (2) weeks from receipt of a notice to cure from STATE. If CONTRACTOR fails to cure, STATE may terminate this Contract by giving CONTRACTOR written notice. STATE shall have no liability to CONTRACTOR thereafter except for payment of any balance due for conforming services performed prior to the date of STATE's notice to cure. STATE may, at its option and without regard to CONTRACTOR's ability to cure, terminate this Contract for cause in the event of any second or subsequent instances of the above breaches by CONTRACTOR.

27. **TERMINATION FOR OTHER THAN NON-PERFORMANCE** If the STATE terminates for reasons other than non-performance, the CONTRACTOR is relieved of any performance responsibilities on the project, and the withheld performance guarantee amount will be released by the STATE. The estimated completion of projects may overlap in new fiscal years. (STATE fiscal year is from July 1, to June 30). If funding is not allocated for individual projects, 'which overlap into the new fiscal year, the project will be automatically terminated on June 30th without written notice to contract.
28. **DISPUTE RESOLUTION PROCEDURE** Any dispute or disagreement arising between STATE and CONTRACTOR shall be resolved according to the following dispute resolution procedure. First, such dispute shall be addressed to each party's Program Manager for discussion and attempted resolution. If any such dispute cannot be mutually resolved by such program managers within five (5) business days, then such dispute shall be immediately referred to the parties' respective business unit vice president or Senior Leader for discussion and resolution. If such parties fail to resolve the dispute within ten (10) business days, then such dispute shall be referred to the parties' respective chief operating officers for discussion and attempted resolution. If parties cannot mutually resolve such dispute within ten (10) business days, then Section 29. FORUM FOR ENFORCEMENT applies.
29. **FORUM FOR ENFORCEMENT** Any controversy or claim arising out of, in connection with, or relating to this Contract or a breach thereof which has not been resolved in accordance with Section 28. DISPUTE RESOLUTION PROCEDURE (above) shall be settled by arbitration under rules of the American Arbitration Association, Utah Board. The Statutes of the State of Utah shall govern the arbitration proceeding, and the proceeding shall be held in Salt Lake City, Utah. Anything to the contrary contained in the above mentioned rules and statutes notwithstanding, the parties consent that any papers, notices, or process necessary or proper for the institution or continuance of, or relating to any arbitration proceeding, or for the confirmation of an award and entry of judgment on any award made, including appeals in connection with any judgment or award, may be served on each of the parties by registered mail addressed to the party at the principal office of the party or by personal service on the party in or without the above mentioned state. The parties hereby recognize and consent to the above mentioned arbitration association's jurisdiction over each and every one of them. Pending settlement of the final decision by the court, CONTRACTOR shall proceed diligently with the performance of the Contract in accordance with STATE's direction.